

- Group III: Claims 1-37 (in part), drawn to methods of use, methods of preparation, compositions, and compounds of Formula I where X is S or O, Y¹ is NH, and Y² is S or O.
- Group IV: Claims 1-37 (in part), drawn to methods of use, methods of preparation, compositions, and compounds of Formula I where X is S or O, Y¹ is S or O, and Y² is NH.
- Group V: Claims 1-37 (in part), drawn to methods of use, methods of preparation, compositions, and compounds of Formula I where X is NH, Y¹ is NH, and Y² is S or O.
- Group VI: Claims 1-37 (in part), drawn to methods of use, methods of preparation, compositions, and compounds of Formula I where X is NH, Y¹ is S or O, and Y² is NH.
- Group VII: Claims 1-37 (in part), drawn to methods of use, methods of preparation, compositions, and compounds of Formula I where X is S or O, Y¹ is NH, and Y² is NH.
- Group VIII: Claims 1-37 (in part), drawn to methods of use, methods of preparation, compositions, and compounds of Formula I where X is NH, Y¹ is NH, and Y² is NH.

Applicants elect, with traverse, Group I, Claims 1-37 (in part), drawn to methods of use, methods of preparation, compositions, and compounds of Formula I where X is S or O, Y¹ is S or O, and Y² is S or O, for examination.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (MPEP §803). Moreover, when citing lack of unity of invention, in a national stage application, the Examiner has the burden of explaining why each group lacks unity with each other (MPEP §1893.03(d)), i.e. why there is no single general inventive concept. The presence of no single inventive concept must be specifically described.

The Examiner has indicated that the application contains a group of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1, because under PCT Rule 13.2:

“they have differing core structures which leads to an *a priori* determination of lack of unity of invention.”

MPEP § 1850 (B) “*Markush Practice*” states:

“When the Markush grouping is for alternatives of chemical compounds, they shall be regarded as being of similar nature where the following criteria are fulfilled:

(A) All alternatives have a common property or activity; and

(B)(1) A common structure is present, i.e., a significant structural element is shared by all the alternatives;”

Applicants respectfully submit that in the above identified application, the compounds of formula (I) in Claim 1 do have the common activity as defined in Claim 1 and therefore meet criterion (A).

Relative to criterion (B)(1) MPEP § 1850 (B) defines “significant structural element is shared by all the alternatives” as “cases where the compounds share a common chemical structure which occupies a large portion of their structures.” Moreover the PCT in the PCT International Search and Preliminary Examination Guidelines provide guidance in this matter through example analysis. Applicants respectfully submit that Examples 19 and 20 on page 85 of the document are suitable references relative to analysis of formula (I). Applicants submit that the compounds of formula (I) all share the common structure of a benzene ring, ring A, a methine bridge from the benzene ring to a five-membered heterocyclic ring containing nitrogen and one other heteroatom in the structural relationship indicated in formula (I) and that this common structure occupies a sufficiently large portion of the structure to meet criterion (B)(1).

Because the compounds of formula (I) meet the criteria of (A) and (B)(1) above, Applicants submit that the claims of the above-identified application relate to a single general inventive concept under PCT Rule 13.1 and therefore unity of invention is not lacking.

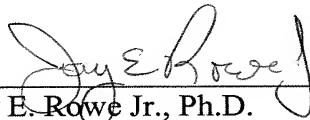
Applicants respectfully traverse the Restriction Requirement on the grounds that no adequate reasons and/or examples have been provided to support a conclusion of patentable distinctness between the identified groups.

For the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the Restriction Requirement. Withdrawal of the Restriction Requirement is respectfully requested.

Applicants submit that the above-identified application is now in condition for examination on the merits, and early notice of such action is earnestly solicited.

Respectfully submitted,

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